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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA and JANET
NAPOLITANO**, *in her official capacity as
President of the University of California,*

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY and ELAINE DUKE**, *in her
official capacity as Acting Secretary of the
Department of Homeland Security,*

Defendants.

Case No. 17-cv-05211-WHA

**STATES OF CALIFORNIA, MAINE,
MARYLAND, AND MINNESOTA'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED PURSUANT TO
N.D. CAL. CIVIL L.R. 3-12(B)**

Trial Date: Not Set
Action Filed: September 8, 2017

I. INTRODUCTION

Pursuant to Civil Local Rule 3-12(b), non-parties the States of California, Maine, Maryland, and Minnesota (“States”) respectfully request that the Court consider whether the action *State of California v. U.S. Department of Homeland Security*, Case No. 17-cv-05235 (the “Multi-State Action”) should be related to the instant case, *The Regents of the University of California v. U.S. Department of Homeland Security*, Case No. 17-cv-5211 (the “University of California Action”).¹ “An action is related to another when: (1) The actions concern substantially the same parties, property, transaction or event; and (2) it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” N.D. Cal. Civ. L.R. 3-12(a).

II. DISCUSSION

Both cases concern substantially the same parties and events. On September 5, 2017, Defendant Acting Secretary of the Department of Homeland Security Elaine Duke (“Duke”) issued a memorandum rescinding the federal government’s Deferred Action for Childhood Arrivals (“DACA”) program. The States and the University of California are both challenging the rescission of this program on substantially similar grounds against the same Defendants. The University of California alleges that the rescission of DACA violates the Administrative Procedure Act (“APA”) because (1) the rescission is arbitrary, capricious, and unreasonable, and was not supported by any adequate explanation; and (2) the rescission of DACA constituted a substantive final rule under the APA, and the rescission of DACA is therefore unlawful for failure by the government to engage in notice-and-comment rulemaking. The University of California also advances a Fifth Amendment claim for the deprivation of constitutionally-protected rights without due process.

The States allege overlapping and other related claims: in addition to substantially similar causes of action under the APA, the States advance a claim under the Regulatory Flexibility Act for failure by the government to engage in—and publish for public comment—the required

¹ The complaint in the Multi-State Action is attached as Exhibit 1 to the Declaration of James F. Zahradka II filed herewith.

1 regulatory flexibility analyses required for substantive final rules; a Fifth Amendment due process
2 claim and an equitable estoppel claim based on the allegation that the States' resident DACA
3 recipients have relied on the government's alleged promises not to misuse their personal
4 information; and a Fifth Amendment claim alleging that the government violated the equal
5 protection of the laws when it rescinded DACA, allegedly depriving DACA grantees, as a class,
6 of their substantial interests in pursuing a livelihood to support themselves and further their
7 education.

8 Both cases name as defendants Elaine C. Duke, Acting Secretary of the Department of
9 Homeland Security, and the U.S. Department of Homeland Security. The States additionally
10 name the United States as a defendant. Both cases seek the Court to declare the rescission of
11 DACA as contrary to law and to enjoin Defendants from rescinding DACA.

12 Given the overlap in parties, factual and legal issues involved, and the relief sought in these
13 cases, conducting the actions in two courts simultaneously may lead to unnecessary duplication of
14 effort and the potential for conflicting results.

15 **III. CONCLUSION**

16 For the reasons set forth above, the States respectfully request this Court to consider
17 whether the Multi-State Action should be related to the University of California Action.
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1 Dated: September 15, 2017

Respectfully Submitted,

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4 Attorney General of California
5 MICHAEL L. NEWMAN
6 Supervising Deputy Attorney General

7 /s/ James F. Zahradka II
8 JAMES F. ZAHRADKA II
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20 **Filer's Attestation:**

21 Pursuant to Local Rule 5-1(h)(3), I attest under penalty of perjury that concurrence in the filing of
22 the document has been obtained from each of the other Signatories.

23 Dated: September 15, 2017

Respectfully submitted,

24 /s/ James F. Zahradka II
25 James F. Zahradka II